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REMARKS

Claims 1-39 are pending in this application. By this Amendment, claims 1, 20, 26, and 30 are amended. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

The Office Action rejects, under 35 U.S.C. § 102, claims 1-8, 11-18, and 20-39 over Maggenti et al. (U.S. Patent No. 6,477,150). The Office Action also rejects, under 35 U.S.C. § 103, claims 9, 10, and 19 over Dailey (U.S. Patent No. 6,449,491). These rejections are respectfully traversed.

Applicants assert that Maggenti does not disclose or suggest monitoring push-to-talk usage of a mobile communication device, the usage being by a user of the mobile communication device and determining a push-to-talk metric based on the push to talk usage of the mobile communication device, as recited in independent claim 1.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference” (MPEP §2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

Maggenti discloses system and method for providing group communication services in an existing communication system. The system and method is implemented within an existing CDMA wireless communication system (col. 2, lines 11-16). A communication device (CD) 202 expects to receive at least one PTX response message for every transmitted PTT request. If a PTX response is not received within a predetermined time, the CD 202 assumes the PTT was lost in transit and retransmits a second PTT (col. 30, lines 43-45). The predetermined time can be for a fixed time duration or it can be altered dynamically, depending on system conditions. For example, the predetermined time could have a relatively short duration (one to two seconds) if the net is not dormant (col. 30, lines 48-52).

Maggenti only discusses increasing a timeout or retransmission delay based on when the network is dormant. This is not based on usage by a user of a mobile communication device. This is based on network behavior. In particular, upon reading col. 30, it is easy to recognize Maggenti is simply identifying one of two states of the PTT network: active or dormant. Thus,

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increasing a timeout or retransmission delay is based on network behavior, not based on usage by a user of a mobile communication device.

Therefore, Maggenti does not disclose or suggest monitoring push-to-talk usage of a mobile communication device, the usage being by a user of the mobile communication device and determining a push-to-talk metric based on the push to talk usage of the mobile communication device, as recited in independent claim 1.

Applicants also assert that Maggenti does not disclose or suggest comparing at least one push-to-talk usage metric to a push-to-talk usage metric threshold, the push-to-talk usage metric being based on the usage of the mobile communication device by a user of the mobile communication device, as recited in independent claim 20.

As discussed above, Maggenti only discusses increasing a timeout or retransmission delay based on when the network is dormant. This is not based on usage by a user of a mobile communication device. This is based on network behavior. In particular, upon reading col. 30, it is easy to recognize Maggenti is simply identifying one of two states of the PTT network: active or dormant. Thus, increasing a timeout or retransmission delay is based on network behavior, not based on usage by a user of a mobile communication device.

Accordingly, Maggenti does not disclose or suggest comparing at least one push-to-talk usage metric to a push-to-talk usage metric threshold, the push-to-talk usage metric being based on the usage of the mobile communication device by a user of the mobile communication device, as recited in independent claim 20.

Applicants further assert that Maggenti does not disclose or suggest monitoring at least one metric of push-to-talk operation of the mobile communication device, the metric of push-to-talk operation being based on the usage of the mobile communication device by a user of the mobile communication device and modifying a push-to-talk mitigation parameter based on the at least one metric of push-to-talk operation of the mobile communication device, as recited in independent claim 26.

As discussed above, Maggenti only discusses increasing a timeout or retransmission delay based on when the network is dormant. This is not based on usage by a user of a mobile communication device. This is based on network behavior. In particular, upon reading col. 30,

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it is easy to recognize Maggenti is simply identifying one of two states of the PTT network: active or dormant. Thus, increasing a timeout or retransmission delay is based on network behavior, not based on usage by a user of a mobile communication device.

Therefore, Maggenti does not disclose or suggest monitoring at least one metric of push-to-talk operation of the mobile communication device, the metric of push-to-talk operation being based on the usage of the mobile communication device by a user of the mobile communication device and modifying a push-to-talk mitigation parameter based on the at least one metric of push-to-talk operation of the mobile communication device, as recited in independent claim 26.

Applicants additionally assert that Maggenti does not disclose or suggest a usage monitor configured to monitor push-to-talk usage of a mobile communication device, by a user of the mobile communication device and a metric determination module configured to determine a push-to-talk metric based on the push to talk usage of the mobile communication device, as recited in independent claim 30.

As discussed above, Maggenti only discusses increasing a timeout or retransmission delay based on when the network is dormant. This is not based on usage by a user of a mobile communication device. This is based on network behavior. In particular, upon reading col. 30, it is easy to recognize Maggenti is simply identifying one of two states of the PTT network: active or dormant. Thus, increasing a timeout or retransmission delay is based on network behavior, not based on usage by a user of a mobile communication device.

Accordingly, Maggenti does not disclose or suggest a usage monitor configured to monitor push-to-talk usage of a mobile communication device, by a user of the mobile communication device and a metric determination module configured to determine a push-to-talk metric based on the push to talk usage of the mobile communication device, as recited in independent claim 30.

Furthermore, Applicant asserts the rejection under 35 U.S.C. § 103 is improper because the rejection does not provide a basis for discussing the Maggenti reference. In particular, the rejection only provides a statutory basis for applying Dailey. Thus, the rejection is improper.

Therefore, Applicants respectfully submit that independent claims 1, 20, 26, and 30 define patentable subject matter. The remaining claims depend from the independent claims and

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therefore also define patentable subject matter. Accordingly, Applicants respectfully request the withdrawal of the rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103.

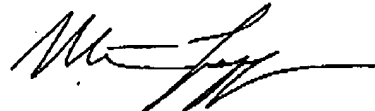
CONCLUSION

Based on the foregoing amendments and remarks, Applicants respectfully submit this application is in condition for allowance. Favorable consideration and prompt allowance of claims 1-39 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

The Commissioner is hereby authorized to deduct any fees arising as a result of this Amendment or any other communication from or to credit any overpayments to Deposit Account No. 50-2117.

Respectfully submitted,



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